THE LEGAL DEFINITION OF THE PRACTICE OF MEDICINE.

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THE State Board of Medical Examiners recently acquired the bulletins of the American Academy of Medicine, a valuable acquisition, because the bulletins deal largely with the subject of medical legislation and report the transactions of the National Confederation of State Examining and Licensing Boards, an organization which meets annually and whose sessions are usually opened with prayer and the address of a Governor or Mayor. In one of these bulletins, that of June, 1902, is found a paper read before the Confederation by Dr. Henry Beates Jr. of Philadelphia entitled: "How Should the Practice of Medicine be Legally Defined." After tracing the origin and growth of medical legislation in this country and taking a fling at the medical colleges whose breach of trust had necessitated the establishment of boards of examiners, Dr. Beates stated that the purpose of our medical practice acts had been defeated and their execution paralyzed by the prevailing judicial interpretation of what constitutes the practice of medicine—hence the necessity of seeking from the legislature a definition broad enough to make these acts effective. The object of the paper was to secure the adoption of a definition which he had formulated, first by the Confederation, then by the profession, which in turn should seek to conventionalize it so that its enactment into law would naturally follow. Dr. Beates had submitted his definition to the members of a number of examining boards, who had endorsed it, and he gave it out as technically perfect. The Confederation, although admitting the necessity for a more scientific definition of the practice of medicine by the legislature, nevertheless failed to adopt that of Dr. Beates, perhaps wisely, too, for the definition proposed was far from being technically perfect. It lacked the supervision of an expert, and I think it would have been wiser to have first submitted it to a confederation of attorneys for boards of examiners.

According to Dr. Beates the legal interpretation of what constitutes the practice of medicine and which has played havoc with the laws regulating its practice is as follows: "To practice medicine is to treat diseases and accidents by means of drugs or medicines, and if the treatment of these is conducted without drugs or medicines, one so doing is not practicing medicine." If we add to the above that the practice of surgery, as defined by certain courts, consists in the treatment of disease or disability by means of the knife, or other surgical instruments, we will have an idea of the narrow and false construction put upon these terms by certain courts. I say by certain courts, because there are many exceptions to the rule, if indeed it can even be called a rule, so numerous are the exceptions. That such an interpretation robs the acts of their intended purpose is obvious enough. Dr. Potter of Buffalo, New York, told the Confederation how it had worked in his state:

> Again, in the state of New York we labor under this difficulty. A good many years ago a very eminent justice of our supreme court expounded the law in a decision which he elaborated with learned and legal phraseology, the essence of which was that the practice of medicine must consist in the prescribing of drugs, and, as in the case before him, no drugs were prescribed, the party could not be held for a violation of the law. That stands as an interpretation of the present statutory law of the state of New York, and if any prosecution is attempted by a medical body or anybody else, or if any person interested in this question goes to any district attorney in the state of New York for information on this point, he will say: "That is the interpretation of the court on the subject. and I cannot aid you. I cannot bring action in this case because it will certainly go against you. I cannot consent to bring action in any case where the decision of the court is so directly against the proposition that you present. So there you are."

Dr. Potter probably had in mind the case of Smith vs. Lane 24 Hun. 632, decided by one of the supreme courts of New York in 1881, a case always cited by such courts as favor the narrow construction. This decision, which worked such disaster, probably came unexpectedly, for by the looks of the record the case seems to have gone by default as far as the medical profession was concerned, and, although the medical act was directly involved, neither board of examiners nor the people, were parties to the proceeding, which was a suit by a quack to recover a stipulated sum for services in rubbing and kneading the bodies of the defendant and his wife. The plaintiff claimed that no license was necessary because the services rendered were not medical, and the court so held, because the plaintiff's methods were drugless and knifeless, and therefore in its opinion harmless. The purpose of the statute, said the Court, was to protect the people against the danger to life and health from the administration of potent drugs and medicines by ignorant and incompetent persons. Credulous people, might, it was true, be deceived into the employment of plaintiff, and thus be imposed upon, but the object of the statute was not to protect the ignorant and the credulous against deception and fraud.

The plaintiff had judgment, and his victory meant the repeal of the medical law as to every empiric who used neither drugs nor the knife. The judgment should have been for the defendant, for the relations of the parties were those of physician and patient. The defendant had employed the plaintiff to treat him "for his bodily infirmities." The dictum was that neither harm nor benefit could result from rubbing and kneading the body. The harm and the danger contemplated by the statute were such as are apt to arise when unlicensed and therefore unqualified persons undertake to treat the sick and to act as physicians. What would the eminent Judge have thought of the following case reported by Dr. Mathews of Louisville during the discussion:

> Permit me just a moment to narrate a trial that occurred in our court a few weeks ago, in which the decision was in our favor in the lower court by a most learned judge, but was reversed by our Supreme Court in a few weeks thereafter. I had the lawyer to ask the osteopath, whom I had arrested and tried, if he treated, for instance, diphtheria? He said he did. I had him ask, "How did you treat diphtheria?" He answered, by the introduction of the hand into and down the throat and manipulating the throat. I then asked Professor Bailey, a learned physician of our city, and who is professor of practice of medicine in the University of Louisville, what such treatment would do? He answered it would kill the infant invariably. In answer to a proposition of the lawyer who was defending this man, we asked Dr. Vance, a distinguished surgeon, if he had not had many cases in surgery in which he did not administer a single dose of medicine. He said that it was his common practice to reduce fractures, dislocations, etc., and possibly never administer any medicine at all.

Perhaps the New York judge might have gone to that length, as did the Supreme Court of Kentucky in the case of Nelson vs. State Board of Health, which took the law from him, and violated not only the spirit of the medical practice act, but also its very letter. In Kentucky, the Legislature had exacted of all would-be practitioners a diploma satisfactory to the State Board of Health, and this Board recognized only such medical colleges as conformed to the standard prescribed by the Association of American Medical Colleges. The profession was not a house divided against itself, as it often is, but was united in a common endeavor to uphold the medical law, and to make it respected. All went

well until an osteopath obtained an injunction restraining the board from prosecuting him. He had a diploma from an osteopathic college, and by his ingenuous counsel asked the court to either compel the board to recognize his college as reputable, under the statute which expressly prohibited discrimination against any system or school of medicine, or, if his system was medicine, to enjoin the board from interfering with him. The court preferred the injunction to the mandamus. It said that osteopathy, which it called a new system of treating disease, was not medicine, nor was plaintiff's college a medical college in spite of its clinics and infirmaries, because it failed to teach surgery, therapeutics, materia medica and bacteriology; nor was plaintiff a physician, but a nurse, or a laborer like any other, because he used neither drugs nor the knife. In vain the board's attorneys pleaded that the practice of medicine was not confined to the use of drugs, or surgery to the use of the knife; that medical colleges taught other things than the application of drugs to the cure of disease. The Court insisted that the Legislature had intended to regulate only the practice of medicine and surgery by physicians and surgeons, as the people and the Court understood those terms, to prevent empiricism on the part of these persons. Yet the title of the act was "An act to protect the citizens of this commonwealth against empiricism," and the Court itself defined empiricism as ignorant or unscientific practice. The act defined the practice of medicine as follows:

Sec. 2618. Any person living in this State, or any person coming into this State, who shall practice medicine, or attempt to practice medicine in any of its branches, or who shall treat or attempt to treat any sick or afflicted person by any system or method whatsoever, for reward or compensation, without first complying with the provisions of this law, etc. To open an office for such purposes, or to announce to the public in any way a readiness to treat the sick or afflicted, shall be deemed to engage in the practice of medicine within the meaning of this Act.

How in the face of such a definition the court reached the conclusion that the accused was not practicing medicine is inconceivable. The definition which was added to the medical statute in 1898 would seem to have been enacted for the express purpose of averting the danger of an interpretation similar to that of New York and a number of other states. In North Carolina the fate of the law was equally strange. There the Board of Examiners was appointed by the State Medical Society, an association of "regularly graduated physicians," which was expressly required to appoint seven regular physicians (not as in California where the state societies may elect from the ranks of the profession at large) and the law exacted a diploma based upon a three years' course of study, and an examination before the board. It did not define the practice of medicine, other than to exempt gratuitous services. Here, as in Kentucky, the law was overthrown by an osteopath who, during the course of treatment otherwise osteopathic, opened a small abscess in the patient's mouth with a knife, but exacted no fee for this last service.

The osteopath also filed a brief himself in which he claimed that "to deny the right to the free and untrammeled use of one's hands upon the body of a sufferer, for his benefit, at his request is to deny constitutional right." The Court said that the Legislature had never intended to require an examination for "a profession which eschews the use of drugs and surgery," or to exact of such a person as the accused a knowledge of anatomy, physiology, surgery, pathology and the other subjects enumerated by the statute, almost all of which would be useless knowledge to exact of an osteopath who prescribes hot and cold baths, rest and exercise, besides rubbing and kneading the body. In the opinion of the Court, the Legislature had only regulated "allopathy," but had not restricted the practice of medicine to that system, and, besides, the defendant was not a physician, although he styled himself a doctor. The board's attorney cited the Alabama case of Bragg vs. The State only just decided, which held precisely to the contrary, but the logic and authority of the Alabama court made no impression upon the court of its sister state. Yet what was plainer than that the Legislature had intended to intrust the practice of medicine only to those who could pass an examination in the branches constituting the science of medicine, and which it especially enumerated?

The Court refused to attach any importance to the fact that the defendant advertised himself as "Doctor," for "Doctors" were apt to be as thick as leaves in Villambrosa. The statute did not deny the use of this title to the empiric, as it does in California. The effect of this decision must have been to render that title as contemptible and common as it will be in California, should those who would like to make it so succeed in overthrowing the medical act.

As we have already said, there are many exceptions to the "interpretation" given by Dr. Beates as the rule. The most notable, besides the instances of Illinois, Nebraska, and Rhode Island, are those of Alabama and Indiana.

Down in Alabama the Legislature created boards of examiners out of the State Medical Society and the county medical societies in affiliation with it, and this delegation of power to the official organs of the profession, under a statute which provided for a diploma and an examination before one of the boards, but did not define the practice of medicine, was the means of uniting the profession against adverse legislation and quackery. In Alabama the courts have not, as in New York, Kentucky and North Carolina, done violence to the will of the Legislature, but have upheld the spirit and the letter of the medical law.

In the case of Bragg vs. The State (59 L. R. A.) decided in 1902, the Supreme Court sustained the conviction of an osteopath for the illegal practice of medicine. Contrasting regulars and osteopaths, the court declared that, although their methods differed, yet both were physicians because both sought the same result, viz: the alleviation or cure of disease; both, in fact, practiced the healing art. It defined medicine as the art or science of diseases and remedies, or as the healing art. The history of medicine and therapeutics was traced to show that the physician had in no age followed a uniform system of therapeutics, that medicine as practiced in every age had never confined itself to the use of drugs and the knife, as pretended by the accused; that the term physician was broad enough to include and did include "all those who diagnose disease and prescribe or apply therapeutic agents for its cure." The decision is so admirable that I am tempted to give it verbatim. It is a complete answer to the adverse decisions of other courts by a learned jurist (Judge Tyson) who, like Judge Field of the United States Supreme Court, has the proper conception of the science of medicine, of the duty of the Legislature to so regulate it that the people may not be injured, deceived or duped by pretenders and impostors, and of the duty of the courts to uphold the policy of the Legislature to that end. The decision will delight every physician who has at heart the interests of his profession and the welfare of the people, and, therefore, hates every species of quackery.

In Parks vs. The State, (59 L. R. A. 199), decided the same year, the Supreme Court of Indiana was equally scientific, although construing a statute which defined the practice of medicine in the broad sense.

The accused, who was a magnetic healer styling himself "Professor," denounced the state law as "an attempt to determine a question of science and to control the personal conduct of the citizen without regard to his opinion and in a matter in which the state is in no way concerned."

We think, on the contrary, said the Court, that the matter is one of considerable concern and that the Legislature is the appropriate tribunal to determine the degree of learning that those who gain a livelihood by seeking to relieve the bodily ailments of others should possess. The legislature confined the use of the magnetic system to a body of men in whose hands it would be safe to intrust it because of their education in subjects relevant to its administration, and was justified in taking it, on account of its danger, out of the hands of empirics.

If a man holds himself out to the community as a person skilled in the science of healing and on that ground seeks the opportunity to exercise the skill he claims to possess, his business becomes impressed with a public character and is therefore subject to reasonable regulation in its prosecution.

Particularly happy is the conclusion of the court that the accused was an empiric because he had no license. That the Von Tiedemanns, Herbeins, Gardinis, Gerinos, Martins, and others of the same ilk who have been arrested for their continued violation of the medical act are not quacks because they have medical diplomas, is a favorite argument of their respective counsel. They are quacks nevertheless as well as law breakers, for now that we have boards of examiners in the United States to pass upon the qualifications of would-be practitioners the title of M. D. carries with it no guaranty of learning or skill. The only evidence of these is the license or certificate. Empiricism means nothing if it does not mean ignorant or unscientific practice, and the man who practices without a license may therefore very properly be called an empiric or quack. By those terms we used to mean a practitioner without a medical degree. Today we use them to designate the practitioner without a license.

Our medical practice act provides that no one shall practice medicine or surgery in this State without the certificate of the present or of some former Board of Examiners, and makes it a crime for any person without such a certificate to represent or hold himself out as a practicing doctor, physician or surgeon. The titles of doctor, physician or surgeon, therefore imply something more than the possession of a medical degree. They imply that those who use them are duly qualified to practice medicine. As Judge Field said in Dent vs. West Va.:

The physician must be able to detect readily the presence of disease, prescribe appropriate remedies for its removal. Everyone may have occasion to consult him, but comparatively few can judge of the qualifications of learning and skill which he possesses. Reliance must be placed upon the assurance given by his license, issued by an authority competent to judge in that respect, that he possesses the requisite qualifications. No one has a right to practice medicine without having the necessary qualifications of learning and skill and the statute only requires that whosoever asserts that by offering to the community his services as a physician that he possesses such learning and skill shall present evidence of it by a certificate or license from a body designated by the State as competent to judge of the qualifications.

According to Judge Field, the Legislature in providing these medical practice acts pursued a double object, to protect the people against "the consequences of ignorance and incapacity," and against those of "fraud and deception."

Such was the intention of our Legislature in providing by the first subdivision of section 16 defining the practice of medicine that "those who profess to be, or hold themselves out as being engaged as doctors, physicians or surgeons in the treatment of disease, injury or deformity of human beings" shall be deemed as practicing medicine or surgery. This is one of the most important features of our medical practice act. Many other states have a similar provision, although differently expressed. Some of them prohibit the opening of an office, the announcing of a readiness to treat the public by any means whatsoever. Our own statute is not so broad. Here empirics of every class may announce themselves as healers or professors, provided, however, they do not use the titles of doctor, physician or surgeon, and do none of the acts enumerated as constituting the practice of medicine and surgery. The reason is obvious. An empiric must be known as such, otherwise the public is deceived. It is the word "doctor" or "physician" which alone wins the confidence of the great majority of men.

As Goethe makes Mephisto say to the pupil:

Ein Titel muß ſie erſt vertraulich machen,
Daß eure Kunſt viel Künſte überſteigt;
Zum Willkomm tappt ihr dann nach allen Siebenſachen,
Um die ein Anderer viele Jahre ſtreicht,
Verſteht das Pülslein wohl zu drücken
Und faſſet Sie mit feurig ſchlauem Blicke
Wohl um die ſchlanke Hüfte frei
Zu ſehen wie feſt geſchnürt ſie ſei.

A FEW REMARKS ON THE TREATMENT OF PRIMARY GLAUCOMA.*

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THE brilliancy—in the widest possible interpretation of the word—of Von Graefe's iridectomy for glaucoma, has not been dimmed by the test of time. That there are cases in every class of primary glaucoma not cured by the operation was known to the great clinician himself, who for nearly fifteen years had practised the operation almost daily. And though one can hardly say, considering the subject as a whole, that the pendulum has ever swung in the opposite direction, still, for a time, there has been some impression abroad, under the influence of other meritorious measures amongst other reasons, as if iridectomy had been somewhat overrated.

Without discussing then the *exact* moment when to do iridectomy in cases of acute inflammatory glaucoma, we may confidently believe with Von Graefe and Arlt that in case of a first attack, even with quantitative perception of light only remaining, *restituto ad integrum* will result from the operation as long as it is done not later than about 14 days after the onset. Taking this as a basal fact, and being in accord with the anatomical findings in cases of iridectomies performed early as well as later, there can be no other conclusion but that in inflammatory glaucoma, acute as well as chronic, we must operate as early as possible, eventually even during the prodromal stage, *e.g.*, if the fellow-eye should already have been injured seriously through the disease. The better the field of vision and the appearance of the papilla, the better the prognosis—where there is only eccentric vision left, the preservation of such through iridectomy becomes doubtful and improvement is no longer to be looked for.

* Read before the San Francisco Society of Eye, Ear, Nose and Throat Surgeons.